

Convergence Policy Agenda

March 2005



I. Background

With the Internet now deeply rooted across modern life and broadband penetration continuing its steady ascent, the communications technology industry continues its transformation. The term “convergence” is being used to refer to the advanced integration of communications and computing functionalities, in particular the ability to offer voice, data, video, and other increasingly intermingled multimedia services seamlessly over single or multiple infrastructures -- as well as to the capability to access such services at any time, at any place, and with an ever-expanding array of network agnostic devices. It also means that competing infrastructure platforms will be able to provide essentially similar multimedia experiences. These next-generation networks (NGN) are driven by digitization, packetization and Internet protocol standards such that any network will be capable of providing any service and will be accessible by any device. The result is dramatically reduced market entry costs, increased flexibility, and enhanced competition. A converged and dynamic global communications infrastructure is expected to bring enormous economic benefits to the U.S. and the world and improve the quality of life for all consumers.

II. TIA Convergence Policy Working Group Mission Statement

The TIA Convergence Policy Working Group (CPWG) was established to monitor, evaluate and make recommendations on the global policy implications of convergence in communications networks and services. It also serves as an educational resource for government policymakers. The CPWG identifies and addresses legislative, regulatory and legal issues affecting convergence, including those that advance TIA’s convergence policy principles or that may impede their success.

III. Policy Principles

With a vigilant eye on the diffusion of new communications technologies into all markets, public policies should foster a climate conducive to innovation and investment, including as non-invasive a regulatory regime as possible. The constant goal must be to achieve a market-oriented policy framework that fosters investment in network facilities and competition in the provision of converged, multimedia services.

Key governing principles:

- Universally available and affordable broadband connectivity
- Encourage competition among all existing and emerging platforms and providers
- Light-handed, narrowly focused regulation, where it is necessary
- Uniformity in regulation, where appropriate, including national rules wherever possible
- Elimination of regulatory barriers to investment
- Minimal, non-discriminatory level of taxation
- Availability of adequate, unencumbered and usable spectrum

IV. Policy Issues

A wide variety of policy issues, old and new, will impact the deployment of converged computing and communications networks and services.

- Telecom Act of 1996 Reexamination

Congress has expressed an intention to begin reexamining the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (“the Act”). Many believe the structure of the Act, as well as many of its provisions, are too outdated to govern the modern communications industry.

Multiple paths are available for communications reform. For example, multiple pieces of legislation could target specific concerns. On the other hand, a major rewrite of the Act could reform the existing Title structure to move away from regulating based on technology-based “silos” to an approach focused more on categorizing by like services. An alternative approach, perhaps a more expedient one, could be to create a new section of law to govern converged, IP-enabled broadband networks, services, and applications. In promoting investment and competitive deployments, it would apply a policy framework that avoids economic regulation altogether but addresses social requirements that will apply on a national, uniform basis. Under this last scenario, while Congress ultimately might need to address “legacy” regulatory or policy issues that remain unresolved, the bifurcation would keep such issues from derailing the establishment of the national, uniform IP policy framework.

TIA supports minimal, uniform national regulations that promote investment in next-generation network deployments. TIA believes that the FCC has the existing authority to move quickly to review and update many of its policies and regulations governing industry, and to continue its agenda of creating a less regulated environment for existing and new technologies and services. TIA also is concerned that a lengthy rewrite process could inject uncertainty into the market and slow down investment. TIA thus supports an efficient review by Congress, as necessary, and will offer recommendations as necessary.

- Codification of The FCC’s Broadband Unbundling Rules

TIA supports limited regulatory oversight of the competitive broadband marketplace. In this regard, TIA notes that the FCC’s watershed decision to forego application of Section 251 unbundling obligations to new, last mile broadband facilities has been a boon to investment in broadband infrastructure. Though it has been upheld in the courts, the decision should be enacted into law to ensure the decision is not altered by future Commissions. This would cement a policy of rewarding investment in advanced communications networks.

- IP Services, Including VoIP

The inherently interstate (and international) nature of IP communications makes it virtually impossible to delineate between intrastate and interstate applications or services. Thus, where subject to regulation, IP services, including but not limited to VoIP, should be subject to the exclusive jurisdiction of the FCC. This must be the base of any federal legislation in this area.

Due to inherent differences between the IP networks on which VoIP or other IP applications ride and the traditional circuit-switched networks, regulation imposed on IP services should be narrowly

focused and not applied without substantial public policy justification. For example, there is no compelling reason that licensing/certification or tariffing requirements should apply to VoIP. In fact, VoIP is not a “telecommunications service” as contemplated in Title II of the Communications Act. Rather, under the Act, IP services, including VoIP, should be classified as minimally regulated “information services” (as under Title I) or as private carriage.

TIA recognizes that, as reflected in our current regulatory regime, certain core public interest issues are implicated by all communications technologies and, therefore, that all communications technologies should play a part in advancing these interests.

- Communications technologies should allow service providers, to the extent technically and operationally feasible, to provide ways for national security and law enforcement authorities to conduct wiretaps, pen registers, and other intercepts/electronic document retrieval in response to appropriate legal processes.
 - Communications technologies should, to the extent technically and operationally feasible, support the emergency response needs of public safety authorities.
 - Communications services should be marketed in a manner that allows consumers to make informed choices, is not deceptive or misleading, and respects consumer choice (*e.g.*, no slamming or cramming). Due to the highly competitive nature of the information services market, we anticipate that market forces will be the strongest agent of consumer protection.
 - Communications technologies should expand the accessibility and usability of communications networks by persons with disabilities. This means, to the extent technically and operationally feasible, designing accessibility into communications technologies and applications. Indeed, market-driven innovation in converged technologies may eventually provide new solutions to old accessibility issues without government intervention.
- Regulatory Treatment of Broadband Internet Access Services

Under the Act, the FCC should classify broadband Internet access services as minimally regulated “information services” (such as under Title I) or private carriage. Indeed, in the highly competitive market for broadband Internet access, regulation should be avoided in favor of market and/or consumer demands, unless there is evidence of clear market failure and a compelling public interest. Even where such evidence exists, any regulations imposed on broadband services should be narrowly focused to the public interest and technology at issue. Legislation could be needed in the event the Supreme Court rules against the FCC in *Brand X*.

Broadband consumers must be provided with unrestricted access to the legal content, applications, and devices of their choice, in the absence of demonstrated harm to a network. Network providers should be encouraged to use voluntary, industry-developed standards in lieu of proprietary protocols.

- Universal Service

While TIA recognizes and fully supports the long history in the United States of promoting universal voice telecommunications service, TIA believes that the universal service program itself needs to be reformed and updated as we move into a broadband world of converged technologies and services. The scope of universal service obligations should be redesigned so as to do no harm to the growing broadband marketplace. The redesigned universal service system should be sustainable, competitively and technologically neutral, and encourage demand.

On the contribution side, contributions must be explicit and only entities that are eligible to receive funds should be required to contribute funds. Further, service classification distinctions should disappear. Finally, federal/state divisions should be eliminated and contributions made on a national basis.

On the distribution side, distributions should follow the service choice of the consumer. Consumers must be allowed to choose applications and services - including narrowband – and the service provider. Distributions should be reserved for high-cost and low-income consumers. States should be allowed to add subsidies but not use regulatory charges to do so. Program regulations should provide financial incentives to encourage service providers to pursue network infrastructure technologies that lower total deployment and operations costs while maximizing service quality and options.

Issues during the transition to a reformed universal service program also need to be addressed, which could include setting funds aside to temporarily aid the transition for rural carriers and initially providing a lesser amount for broadband connectivity versus narrowband.

VoIP may help reduce the costs of serving high cost areas by reducing routing and transport costs. Universal service, however, must be supported in ways that: (a) make certain that support is not greater than the minimum necessary to ensure universal service at affordable and reasonably comparable rates; (b) recognize that voice is only one of many applications provided over IP networks and that segregating voice from other applications is technically infeasible; (c) do not create barriers to the introduction and deployment of such technologies to provide service in rural areas; (d) do not impose legacy regulation on VoIP in lieu of reforming the mechanisms in a manner that is more compatible with market drivers and technological innovation.

Finally, the E-Rate for Schools and Libraries should continue to be supported. This program benefits communities across the nation regardless of location or economic condition by helping to ensure that all eligible schools and libraries have affordable access to modern communications services.

- Intercarrier Compensation

The transition to a uniform national intercarrier compensation mechanism must occur soon. For example, it makes no sense to impose today's interstate and intrastate access charge structure on VoIP, which does not have easily identifiable geographic communication end points. Thus, TIA encourages the FCC to establish a geographically neutral intercarrier compensation system as soon as possible.

- Federal Funding of Communications Industry Research

Research is the backbone of the communications industry, a critical national resource and the building block for the future development of advanced telecommunications products and services. Due to years of industry turmoil, intense competition and low profitability, however, industry research budgets have been slashed dramatically. Because of the long-term impact on our national social and economic interests, substantial increases are needed in federal funding of communications industry research. Funding priorities identified by TIA's Chief Technology Officer Council include universal broadband, security, interoperable mobility and telecommunications research for homeland security.

- Spectrum

Flexible, market-driven, and technology neutral spectrum management policies will promote further innovation and competition in the broadband marketplace. Although additional spectrum has been identified recently, the ever-increasing need for spectrum for advanced wireless services and technologies continues. Wireless broadband platforms are an increasingly popular alternative for business and residential consumers to access the Internet, with the potential to deliver broadband to rural and underserved areas and to compete with and/or complement existing and future wired and wireless broadband technologies.

- DTV Transition

A “hard” deadline is needed for the transition from analog to digital broadcasting, in order to reclaim valuable spectrum for the American public that can be used for public safety purposes as well as commercial advanced wireless technologies. With a date certain, public safety officials and manufacturers and providers of advanced wireless services would know when they will be able to begin operations in the 700 MHz band, allowing them the opportunity to invest in the research, development and manufacture of equipment. TIA supports the target date set by Congress of December 31, 2006 for completion of the DTV transition.

- Incentives for Broadband Investment

To help eliminate gaps in achieving a nationwide next-generation communications infrastructure, a wide array of fiscal incentives should be provided, such as grants, tax credits, expensing and depreciation schedules, pilot-project funding and low-interest loans. One prime example is the two-tiered tax incentive approach of the Broadband Internet Access Act offered during the prior congressional session that garnered extensive bipartisan support.

- Municipal Deployment of Broadband Networks

With a national interest in ubiquitous broadband deployment, states should not be permitted to outlaw local public efforts to address citizen demand for broadband connectivity. Outright prohibitions, or measures with such practical effect, exceed legitimate interests in preserving a fair competitive environment.